IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.446 OF 2006
IN
SUIT NO.1672 OF 1993

Johny Pedru Rodrigues and ors. ...Plaintiffs
vs.
Municipal Corporation of Greater Bombay ...Defendant

Mr.H.R.Yadav for the Plaintiffs
Mr.H.C.Pimple for the Defendant

CORAM: A.S.OKA,J.
DATE : MARCH 13,2007

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs for restoration of the suit which was dismissed for default by order dated 21st January 1998 passed by the learned Prothonotary and Senior Master, High Court, Bombay.

2. The learned Advocate for the Plaintiffs in support of the Notice of Motion pointed out that the written statement was not filed by the Defendant-Corporation and therefore, the Plaintiffs were under an impression that the suit will not proceed on 14th January 1988 and 21st January 1988 when the same was placed before the learned Prothonotary and Senior Master. He submitted that the Plaintiffs were not aware about the dismissal of the suit. He pointed out that a Chamber Summons was taken out for amendment of the plaint for bringing on record the legal representatives of the original Plaintiff. The said Chamber Summons was made absolute on 4th February 1998 and an amendment was accordingly carried out to the

plaint on 17th February 1998. He pointed out that the amended plaint was served to the Defendant on 22nd September 1999. He submitted that the reasons for delay are properly explained in the Affidavit in support.

3. The Advocate for the Defendant opposed the Notice of Motion by contending that the Plaintiffs persistently remained absent and therefore, there was every justification for dismissal of the suit. He submitted that in case this court is inclined to restore the suit, time of four weeks may be granted to file the written statement.

4. The learned Counsel for the Plaintiffs submitted that in case the suit is restored, the Plaintiffs have no objection if the time is granted to the Defendant to file written statement.

5. I have considered the submissions. On 3rd November 1997 a Chamber Summons No.1444 of 1997 was taken out by the present Plaintiffs for amendment of the plaint. During the pendency of the said Chamber Summons, the suit was placed on board on 14th January 1998 before the learned Prothonotary and Senior Master. On that date, none appeared for the Plaintiffs and therefore, the suit was adjourned to 21st January 1998. On 21st January 1998, as none appeared for the Plaintiffs the suit was dismissed for default. The record discloses that on

4th February 1998, this Court made the Chamber Summons taken out by the Plaintiffs absolute and on 17th February 1998 an amendment to the plaint was also carried out. It is asserted in the Affidavit in support that on 22nd September 1999 a copy of the amended plaint was served to the Defendant. In view of these events, it is obvious that the Plaintiffs were not aware about the dismissal of the suit. It is set out in the Affidavit in support that on 17th January 2006, the first Plaintiff made an enquiry in the Computer Section of this court and learnt that the suit has been dismissed for default. Thereafter, a Notice of Motion was taken out on 14th February 2006.

6. There is sufficient explanation for delay in the Notice of Motion. Sufficient cause is made out for restoration of the suit.

7. Hence, I pass the following order :

i) Notice of Motion is made absolute in terms of prayer clauses (a) and (b).

ii) Time to file written statement is extended by a period of four weeks from today.

iii) It is made clear that no further time will be granted to

the Defendant to file the written statement. No order as to costs.

JUDGE